



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

April 13, 1984

You request a ruling concerning the Massachusetts income tax consequences of the proposed liquidation of the ("Trust"). The Trust was organized on July 1, 1979, as a Massachusetts corporate trust with transferable shares for the purpose of buying, selling, or otherwise dealing in real estate. None of the shareholders, all individuals, are Massachusetts residents. Under the proposed plan of liquidation, the only asset owned by the Trust, a building, will be distributed to the shareholders in exchange for the cancellation of the shares of the Trust. The Trust has no earnings and profits. The value of the property to be distributed will exceed each shareholder's basis in his stock. The proposed liquidation will occur within one calendar month and will be governed by Section 333 of the Internal Revenue Code ("Code").

A Massachusetts corporate trust is subject to taxation under Chapter 62 of the Massachusetts General Laws and, with certain exceptions not here relevant, the adjusted gross income of a corporate trust is determined as though it were a resident natural person. (G.L. c. 62, § 8(a)). Massachusetts gross income is federal gross income with certain modifications. (G.L. c. 62, §§ 1, 2). Under Section 8(c) of Chapter 62, dividends received from a corporate trust, which is subject to taxation, are not taxable, except to the extent that they were derived from tax-free earnings and profits.

Chapter 62, Section 1(e) defines "dividend" as "any item of federal gross income which is a dividend under Section

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316 of the Code or which is treated as a dividend under any other provision of the Code."

For federal income tax purposes, the Trust is an association taxable as a corporation. Under Section 336 of the Code, generally a corporation recognizes no gain or loss for federal tax purposes on the distribution of its property in complete liquidation.

Section 333 of the Code limits the amount of gain recognized by a qualifying electing non-corporate shareholder upon the complete liquidation within one calendar month of a domestic corporation. The shareholder is required to recognize gain in an amount equal to the greater of (1) his ratable share of the corporation's earnings and profits accumulated after February 28, 1913, or (2) amounts received by the shareholder consisting of money and the fair market value of stock or securities acquired by the corporation after 1953. In no event may recognized gain exceed realized gain. Dividend income to non-corporate shareholders is that portion of recognized gain not in excess of the shareholder's ratable share of earnings and profits accumulated after February 28, 1913. The remainder of the gain is either short-term or long-term capital gain, depending on the length of time the shares have been held. (I.R.C. § 333(e)).

Section 334(c) of the Code provides that property received in liquidation by a qualifying electing shareholder under Section 333 wherein there is limited recognized gain shall have a basis equal to the basis of the shares redeemed decreased by the amount of any money received and increased by gain recognized by the shareholder.

Based on the foregoing it is ruled that:

1. For Massachusetts income tax purposes, the distribution of the assets of the Trust will not result in the recognition of gain or loss to the Trust.

2. The shareholders will recognize capital gain and dividend income for Massachusetts tax purposes to the extent that capital gain and dividend income is recognized for federal purposes. The dividend income will not be included in the shareholder's Massachusetts gross income except to the extent that the dividends were derived from tax-free earnings and profits as defined in Section 8(c) of Chapter 62.

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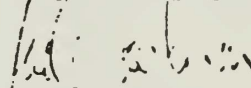
3. For Massachusetts income tax purposes the shareholder's basis in the property distributed to him will be the same as his federal adjusted basis in such property.

You also inquire whether the Massachusetts deeds excise applies to the deed by which the Trustees of the Trust distribute real estate to the shareholders in complete liquidation.

General Laws Chapter 64D, Section 1 requires that a deeds excise tax be paid whereby any real estate is transferred to a purchaser. The excise is imposed only if the consideration for the property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, is greater than one hundred dollars. (G.L. c. 64D, § 1).

Based on the foregoing, it is ruled that the deed by which the Trustees of the Trust distribute real estate to the shareholders in a complete liquidation of the Trust is not subject to the deeds excise.

Very truly yours,



Commissioner of Revenue

IAJ:ADH:mf

LR 84-20